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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,818	12/31/2001	Robert L. Popp	KCC 4771	9058

321 7590 02/24/2005

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

REICHLER, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,818

Applicant(s)

POPP ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 19-23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 19-23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/04 and 1/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-14-04 has been entered.

Specification

Drawings

2. The drawings were received on 12-14-04. These drawings are accepted by the Examiner.

Description

3. The abstract as filed 12-14-04 could not be entered because it was not presented on a separate page, i.e. not in compliance with 37 CFR 1.121 effective 7-30-03.

4. The abstract of the disclosure is objected to because legal terminology, i.e. "said", should be avoided. Correction is required. See MPEP § 608.01(b).

5. The amendment filed 2-20-04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the

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original disclosure is as follows: the amendment to page 27, line 2, lines 27-31 thereof, i.e. where is the support as originally filed for the changes made to the recitation of the elastomeric materials? See response to Arguments section infra also.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Language Interpretation

6. "Neck-stretched" is defined as set forth on page 9, lines 1-3. The terminology "attached" is interpreted in view of the definition bridging pages 5-6, i.e. could be direct or indirect attachment. Applicant has defined "cross machine direction" and, thereby, "machine direction" in claims in claims 20 and 3 with respect to the directions of the loop component during manufacture. With regard to claims 21-23, it is noted that it is not claimed how the component is mounted on the article or how stretchable the loop component is, i.e. the specific amount of limited movement, relative to the hook component after such mounting. With regard to claim 23 it is noted that the end region that the loop component can be mounted on is either the front or the rear end or both.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 19 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Hetzler '136.

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See definitions in paragraph 9, *supra*, col. 10, line 65-col. 12, line 2 and Figure 3, i.e. teaches a mechanical fastening system 88 for an article 80 with a loop fastening component and a hook component, see elements 10 and 30 in Figure 2, col. 7, lines 20-36, col. 9, lines 54-56, col. 8, lines 34-39 and col. 9, lines 1-3 and 26-36, i.e. the loop component is a neck stretched, i.e. prestrained, nonwoven material directly attached to an elastic substrate and the component and elastic are capable of stretching in multiple directions, i.e. the CD and MD directions. The whereby clause recites properties, functions or capabilities of the claimed structure. As discussed *supra*, the '136 reference includes all the claimed structure. Therefore there is sufficient factual evidence for one to conclude that the claimed properties, functions and capabilities would also be inherent in the same structure of the '136 device. See MPEP 2112.01. With regard to the added limitations of claim 19 and new claim 25, see again col. 7, lines 20-36, i.e. at least about 150 percent, i.e. at least about 2.5 times a relaxed length.

Claim Rejections - 35 USC § 102/103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 3 and 20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hetzler et al '136.

With regard to claim 3, this claim is a product by process claims. See MPEP 2113. It is noted that it is the structure of the end product not the process of making the end product which determines patentability, i.e. claims would be unpatentable even if the prior art did not teach the same process of making as long as the prior art taught the same structure as that of the end

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product of such claimed process. Additionally, and also with respect to claim 20, see col. 9, lines 26-36 and col. 9, lines 54-56. It is the Examiner's first position that the '136 reference teaches stretching the nonwoven material in a machine direction of the loop component so as to neck down in the cross machine direction of the loop component because it teaches the support layer of the laminate being a necked material which is extensible in the cross machine direction of the laminate and that the '136 reference teaches attaching the nonwoven material to the elastic substrate stretched in the machine direction so that the loop component gathers in the machine direction because it teaches the film can be stretched during bonding to such a support layer and that such results in machine direction stretch. In any case, i.e. the Examiner's second position, to make a support layer of necked material which layer is also extensible in the cross machine direction of the laminate as taught by '136 by stretching the support layer in the machine direction so as to neck down in the cross direction of the laminate, i.e. loop component, if not already, and to make the elastic film layer stretched in the machine direction and attached to the necked support layer when stretched as taught by '136 so as to gather the combination in the machine direction of the laminate, i.e. loop component, if not already, would be obvious to one of ordinary skill in the art because it is well known that stretching a neckable material in the machine direction creates neck down, i.e. extensibility, in the cross machine direction of the necked material and that stretching an elastic layer in a machine direction and attaching it to another layer while it is stretched will cause gathering of the combination in the machine direction so as to make the laminate extensible in the machine direction and the desire of '136 to have a necked support layer which is also extensible in the cross machine direction and an elastic

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layer attached to the support layer in the stretched condition to create a laminate which laminate is also stretchable in the machine direction.

Claim Rejections - 35 USC § 103

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 3, 19-20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morman et al '028, and thereby Morman '781 and '662, in view of Hetzler '136.

With regard to claims 19, 25, 20 and 3, see col. 1, lines 5-7, col. 2, lines 6-8, and 10-13, col. 4, lines 11-13, col. 8, lines 27-35, col. 9, lines 58-66 and col. 11, line 65-col.12, line 16, and thereby Morman '662 at col. 11, line 40-col. 12, line 34 and Morman '781 at col. 13, line 41- col. 14, line 61 (compare to page 29, lines 28-30, page 32, lines 7-15 and page 36, line 20-page 37, line 25 of the instant specification), i.e. a neck stretched or prestrained material 12 is directly attached to an elastic substrate which is stretchable in two directions to form a laminate which is capable of elastic stretch in two directions and the material 12 is necked in the cross direction of the laminate and is attached to the elastic substrate as claimed in claim 3. The laminate so formed can be used as a breathable elastic film and nonwoven laminate outer cover of a diaper. With regard to the new limitations in claim 19 and new claim 25, see, e.g., col. 2, lines 58-63, i.e. at least about 160 percent, i.e. at least 2.5 times the relaxed length. Therefore, the Morman '028 device includes all the claimed structure except for such laminate being used as a loop component of a mechanical fastening system for an article which system also includes a hook component. However, Hetzler '136 also teaches a breathable, elastic film and nonwoven

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laminate can not only be used as the outer cover of a diaper but also as a loop component of a hook and loop mechanical fastener system in a diaper, see col. 10, line 65-col. 12, line 2 as well as the other portions of the '136 reference cited supra. To use the breathable, elastic film and nonwoven laminate to not only to form the outer cover but also form a loop component of a mechanical fastening system would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Hetzler. With regard to the whereby clauses of claim 19, if not already taught by the prior art combination, the prior art combination would necessarily and inevitably possess the same functions, capabilities and properties because it includes the same materials processed in the same manner as the claimed invention, see cited portions of references and the instant application supra.

13. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hetzler '136 in view of Robertson '140 or Morman et al '028, and thereby Morman '781 and '662, in view of Hetzler '136 and Robertson '140.

With regard to claims 21-23, these product by process claims further require that the loop component be formed separately from and mounted on the article, more specifically mounted on the outer layer or mounted at one of the end regions, i.e. the end product includes a loop component which is not monolithically formed with the outer cover. See also Claim Interpretation section and the discussion of product by process supra as well as the discussion of Hetzler alone in paragraph 11 or Morman and Hetzler together in paragraph 13, i.e. at the very least the prior art teaches a monolithically formed loop component. See also Robertson '140 at Figures and col. 11, line 23-col. 12, line 14, i.e. a loop fastening component can be part of the outer cover or layer, i.e. monolithically formed, or be a discrete separate element mounted on the

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outer layer of the article. To make a loop component which is part of the outer cover or layer as taught by Hetzler, see paragraph 11, or Morman and Hetzler, see paragraph 13, a discrete separate loop fastening component mounted on the article instead, if not already, would be obvious in view of the interchangeability as taught by Robertson.

Response to Arguments

14. Applicant's remarks with regard to matters of form have been considered but are either deemed moot in that such issue has not been reraised or is deemed not persuasive for the reasons set forth supra. With regard to the new matter issue, while PEBAX may not be a nonelastomeric as set forth originally this is not support for it then being claimed as one of the suitable elastomeric materials. Applicant's remarks with regard to the prior art have been considered but are deemed narrower than the claim language and narrower than the teachings of the prior art references, see cited portions supra and prior art rejections supra as well as the remarks in the NOTE of the 7-28-04 Office Action. It is also noted that the remarks, e.g. on page 16, lines 23-25 and page 17, lines 7-8, appear to be inconsistent.


Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
February 7, 2005